

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
WACO DIVISION**

JAWBONE INNOVATIONS, LLC,  
  
Plaintiff,

v.

GOOGLE LLC,  
  
Defendant.

Case No. 6:21-CV-00985-ADA

**GOOGLE LLC’S ANSWER AND AFFIRMATIVE DEFENSES TO PLAINTIFF  
JAWBONE INNOVATIONS LLC’S FIRST AMENDED COMPLAINT FOR PATENT  
INFRINGEMENT**

Defendant Google LLC (“Google”), by and through its counsel, submits its Answer to Plaintiff Jawbone Innovations, LLC (“Jawbone’s”) First Amended Complaint for Patent Infringement. Any allegation not specifically admitted herein is denied.

**THE PARTIES**

1. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

2. Google admits that Google LLC is a Delaware limited liability company with a principal place of business at 1600 Amphitheatre Parkway, Mountain View, California 94043. Google admits its registered agent in Delaware is Corporation Service Company, 251 Little Falls Drive, Wilmington, Delaware 19808. Google denies any remaining allegations in this paragraph.

3. Google admits that some of its products and/or services, including those accused herein of infringement, are offered to customers and potential customers located in this judicial district. Google denies any remaining allegations in this paragraph.

4. Google admits that it has an office at 500 West 2nd Street, Austin, Texas 78701. Google denies any remaining allegations in this paragraph.

5. Google admits that this action invokes the United States patent laws, and that this Court has subject matter jurisdiction over patent law claims. Google denies any remaining allegations in this paragraph.

6. Solely for the purpose of this action, Google does not contest personal jurisdiction in this judicial district. Google specifically denies that it has committed any acts of infringement within the Western District of Texas, or any other district. Google denies any remaining allegations in this paragraph.

7. Google admits that venue is proper in this district for purposes of this particular action but not convenient or in the interests of justice under 28 U.S.C. § 1404(a). Google admits that it has an office at 500 West 2nd Street, Austin, Texas 78701. Google specifically denies that it has committed any acts of infringement within the Western District of Texas, or any other district. Google denies any remaining allegations in this paragraph.

8. Solely for the purpose of this action, Google does not contest personal jurisdiction in this judicial district. Google specifically denies that it has committed any acts of infringement within the Western District of Texas, or any other district. Google denies any remaining allegations in this paragraph.

### **FACTUAL BACKGROUND**

9. Google admits that U.S. Patent No. 8,019,091 (the “’091 Patent”), on its face, bears the title quoted in this paragraph and an issuance date of September 13, 2011. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies them.

10. Google admits that U.S. Patent No. 7,246,058 (the “’058 Patent”), on its face, bears the title quoted in this paragraph and an issuance date of July 17, 2007. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies them.

11. Google admits that U.S. Patent No. 8,280,072 (the “’072 Patent”), on its face, bears the title quoted in this paragraph and an issuance date of October 2, 2012. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies them.

12. Google admits that U.S. Patent No. 8,321,213 (the “’213 Patent”), on its face, bears the title quoted in this paragraph and an issuance date of November 27, 2012. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies them.

13. Google admits that U.S. Patent No. 8,326,611 (the “’611 Patent”), on its face, bears the title quoted in this paragraph and an issuance date of December 4, 2012. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies them.

14. Google admits that U.S. Patent No. 10,779,080 (the “’080 Patent”), on its face, bears the title quoted in this paragraph and an issuance date of September 15, 2020. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies them.

15. Google admits that U.S. Patent No. 11,122,357 (the “’357 Patent”), on its face, bears the title quoted in this paragraph and an issuance date of September 14, 2021. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies them.

16. Google admits that U.S. Patent No. 8,467,543 (the “’543 Patent”), on its face, bears the title quoted in this paragraph and an issuance date of June 18, 2013. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies them.

17. Google admits that U.S. Patent No. 8,503,691 (the “’691 Patent”), on its face, bears the title quoted in this paragraph and an issuance date of August 6, 2013. Google is

without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies them.

18. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

19. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

20. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

21. Google is without knowledge or information sufficient to form a belief as to the truth of the allegations in this paragraph, and therefore denies them.

22. Google denies the allegations in this paragraph.

23. Google denies the allegation in this paragraph.

24. Google admits that it employed Sameer Samat as a Vice President, Product Management, prior to 2015. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies them.

25. Google is without knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them. To the extent this paragraph includes any allegations to which a response is required, Google denies them.

26. Google admits that Mr. Samat was a Vice President for Product Management in January 2016. Google denies that it became aware of the '091, '072, '691, '543, '058, and '611 patents at that time. Google is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in this paragraph, and therefore denies them.

27. Google admits that Eric Breitfeller is the listed co-inventor of the '091 Patent. Google denies the remaining allegations in this paragraph.

28. Google is without knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them. To the extent this paragraph includes any allegations to which a response is required, Google denies them.

29. Google is without knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them. To the extent this paragraph includes any allegations to which a response is required, Google denies them.

30. Google denies the allegations in this paragraph.

31. Google denies the allegations in this paragraph.

32. Google denies the allegations in this paragraph.

33. Google denies the allegations in this paragraph.

34. This paragraph sets forth argument and legal conclusions to which no response is required. To the extent this paragraph includes any allegations to which a response is required, Google denies them.

35. This paragraph sets forth argument and legal conclusions to which no response is required. To the extent this paragraph includes any allegations to which a response is required, Google denies them.

36. Google admits that the webpage cited in footnote 6 of the Complaint contains the phrase “uniquely placed beamforming mics and voice accelerometer deliver crystal-clear calls even in noisy environments.” Google denies that the webpage cited in footnote 7 of the Complaint contains the phrases “voice accelerometer” or “motion-detecting accelerometer and gyroscope.” The remaining allegations of this paragraph are either too vague or ambiguous to admit or deny, or are legal conclusions to which no response is required. To the extent this paragraph includes any allegations to which a response is required, Google denies them. Google specifically denies that it has committed any acts of infringement.

37. Google admits that Gregory C. Burnett is the listed inventor of the '072 patent titled “Microphone Array with Rear Venting.” The remainder of this paragraph sets forth argument and legal conclusions to which no response is required. Google is without knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them. To the extent this paragraph includes any allegations to which a response is required, Google denies them.

38. Google admits that the webpage cited in footnote 9 of the Complaint contains the language quoted in this paragraph. The remaining allegations of this paragraph are either too vague or ambiguous to admit or deny, or are legal conclusions to which no response is required. To the extent this paragraph includes any allegations to which a response is required, Google denies them. Google specifically denies that it has committed any acts of infringement.

39. Google admits that Gregory C. Burnett, Nicolas Petit, and Zhinian Jing are the listed inventors of the '611 and '213 patents, each titled "Acoustic Voice Activity Detection (AVAD) For Electronic Systems." The remainder of this paragraph sets forth argument and legal conclusions to which no response is required. Google is without knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them. To the extent this paragraph includes any allegations to which a response is required, Google denies them.

40. Google admits that it sold certain Google Nest products within the United States. The remainder of this paragraph sets forth argument and legal conclusions to which no response is required. To the extent this paragraph includes any allegations to which a response is required, Google denies them. Google specifically denies that it has committed any acts of infringement.

41. Google admits that Gregory C. Burnett, is the listed inventor of the '080 patent titled "Dual Omnidirectional Microphone Array (DOMA)." The remainder of this paragraph sets forth argument and legal conclusions to which no response is required. Google is without knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them. To the extent this paragraph includes any allegations to which a response is required, Google denies them.

42. Google admits that it sold certain Pixel Buds products in the United States. The remainder of this paragraph sets forth argument and legal conclusions to which no response is required. To the extent this paragraph includes any allegations to which a response is required, Google denies them. Google specifically denies that it has committed any acts of infringement.

43. Google admits that Gregory C. Burnett, is the listed inventor of the '357 and '691 patents, titled "Forming Virtual Microphone Arrays Using Dual Omnidirectional Microphone Array (DOMA)" and "Virtual Microphone Arrays Using Dual Omnidirectional Microphone Array (DOMA)," respectively. The remainder of this paragraph sets forth argument and legal conclusions to which no response is required. Google is without knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them. To the extent this paragraph includes any allegations to which a response is required, Google denies them.

44. Google admits that it sold certain Pixel Buds products in the United States. The remainder of this paragraph sets forth argument and legal conclusions to which no response is required. To the extent this paragraph includes any allegations to which a response is required, Google denies them. Google specifically denies that it has committed any acts of infringement.

45. Google admits that Gregory C. Burnett, Nicolas Petit, Alexander M. Asseily, and Andrew E. Einaudi are the listed inventors of the '543 patent titled "Microphone and Voice Activity Detection (VAD) Configurations for Use with Communication Systems." The remainder of this paragraph sets forth argument and legal conclusions to which no response is required. Google is without knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them. To the extent this paragraph includes any allegations to which a response is required, Google denies them.

46. Google admits that it sold certain Pixel Buds products and the Google Pixel 5 in the United States. Google also admits that the webpage cited in footnote 12 of the Complaint contains the phrase "uniquely placed beamforming mics and voice accelerometer deliver crystal-clear calls even in noisy environments." The remainder of this paragraph sets forth argument and legal conclusions to which no response is required. To the extent this paragraph includes any allegations to which a response is required, Google denies them. Google specifically denies that it has committed any acts of infringement.

47. Google admits that it has sold smart phones, tablets and/or notebooks, earbuds and smart home devices that may be enabled to use Google Assistant. Google denies any remaining allegations in this paragraph. Google specifically denies that it has committed any acts of infringement.

48. The allegations in this paragraph set forth legal conclusions to which no response is required. To the extent this paragraph includes any allegations to which a response is required, Google is without knowledge or information sufficient to form a belief as to the truth of the factual allegations in this paragraph, and on that basis denies them.

### **COUNT I (Infringement of the '091 Patent)**

49. Google incorporates by reference its responses to the allegations of paragraphs 1 to 48 above as its response to this paragraph.

50. This paragraph contains legal argument and legal conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

51. This paragraph contains legal argument and legal conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

52. This paragraph contains legal argument and legal conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

53. This paragraph contains legal argument and legal conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.



54. This paragraph contains legal argument and legal conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

55. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

56. This paragraph contains legal argument and legal conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

57. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

58. Google admits that the webpage cited in footnote 18 states that “Pixel Buds have a voice accelerometer that can detect speech through the vibrations of your jawbone, so that you can be heard even in windy conditions, like when you’re running or biking.” This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

59. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

60. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

61. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

62. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

63. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

64. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

65. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

## **COUNT II (Infringement of the '058 Patent)**

66. Google incorporates by reference its responses to the allegations of paragraphs 1 to 48 above as its response to this paragraph.

67. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

68. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

69. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

70. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

71. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

72. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

73. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

74. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

75. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

76. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

77. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

78. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

79. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

80. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

81. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

82. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

83. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph

### **COUNT III (Infringement of the '072 Patent)**

84. Google incorporates by reference its responses to the allegations of paragraphs 1 to 48 above as its response to this paragraph

85. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

86. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

87. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

88. This paragraph contains legal argument and legal conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

89. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

90. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

91. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

92. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

93. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

94. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

95. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

96. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

#### **COUNT IV (Infringement of the '213 Patent)**

97. Google incorporates by reference its responses to the allegations of paragraphs 1 to 48 above as its response to this paragraph.

98. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

99. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

100. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

101. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

102. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

103. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

104. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

105. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

106. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

107. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

108. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.



109. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

110. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

#### **COUNT V (Infringement of the '611 Patent)**

111. Google incorporates by reference its responses to the allegations of paragraphs 1 to 48 above as its response to this paragraph.

112. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

113. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

114. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

115. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

116. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

117. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

118. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

119. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

120. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

121. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

122. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

123. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

124. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

#### **COUNT VI (Infringement of the '080 Patent)**

125. Google incorporates by reference its responses to the allegations of paragraphs 1 to 48 above as its response to this paragraph.

126. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

127. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

128. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

129. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

130. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

131. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

132. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

133. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

134. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

135. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

136. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

137. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

138. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

139. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

140. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

#### **COUNT VII (Infringement of the '357 Patent)**

141. Google incorporates by reference its responses to the allegations of paragraphs 1 to 48 above as its response to this paragraph.

142. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

143. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

144. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies

any additional allegations in this paragraph.

145. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

146. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

147. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

148. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

149. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

150. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

151. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

152. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

153. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

154. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

#### **COUNT VIII (Infringement of the '543 Patent)**

155. Google incorporates by reference its responses to the allegations of paragraphs 1 to 48 above as its response to this paragraph.

156. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

157. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

158. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

159. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies

any additional allegations in this paragraph.

160. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

161. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

162. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

163. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

164. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

165. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

166. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.



167. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

168. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

169. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

170. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

171. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

#### **COUNT IX (Infringement of the '691 Patent)**

172. Google incorporates by reference its responses to the allegations of paragraphs 1 to 48 above as its response to this paragraph.

173. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

174. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

175. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

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187. This paragraph contains legal argument and conclusions to which no response is required, but to the extent a response is required, Google denies the allegations. Google denies any additional allegations in this paragraph.

#### **DEMAND FOR A JURY TRIAL**

Jawbone's demand for a jury trial for all counts of the complaint does not state any allegation, and Google is not required to respond. To the extent any allegations are included in the demand, Google denies these allegations.

## **PRAYER FOR RELIEF**

These paragraphs set forth the statement of relief requested by Jawbone to which no response is required. Google denies any allegations contained in the Prayer for Relief to which a response is required, including without limitation the claim of willfulness.

Google denies each and every allegation of Jawbone's complaint not specifically admitted or otherwise responded to above. Google specifically denies that it has infringed or is liable for infringement of any valid and enforceable patent claims of Jawbone. Google further specifically denies that Jawbone is entitled to any relief whatsoever of any kind against Google as a result of any act of Google or any person or entity acting on behalf of Google.

## **GOOGLE'S AFFIRMATIVE DEFENSES**

Google asserts the following affirmative defenses. To the extent any of the defenses, in whole or in part, relates to or negates an element of Jawbone's claims, Google in no way seeks to relieve Jawbone of its burden of proof or persuasion on that element. All defenses are pled in the alternative and do not constitute an admission of liability or that Jawbone is entitled to any relief whatsoever. Google reserves any and all rights it has under the Federal Rules of Civil Procedure to assert additional defenses and/or counterclaims as additional facts are learned or present themselves during discovery or otherwise during the course of these proceedings.

### **First Affirmative Defense – No Patent Infringement (All Counts)**

Google does not infringe and has not infringed (not directly, contributorily, or by inducement), either literally or under the doctrine of equivalents, and is not liable for infringement of any valid and enforceable claim of the '091, '058, '072, '213, '611, '080, '357, '543, '691 Patents (collectively, the "Patents-in-Suit"). Google also does not infringe any valid and enforceable claim of the Patents-in-Suit based on the reverse doctrine of equivalents.

### **Second Affirmative Defense – Invalidity and/or Non-Patentability (All Counts)**

The claims of the Patents-in-Suit are invalid and unenforceable for failure to satisfy one or more of the requirements of Title 35 of the United States Code, including without limitation 35 U.S.C. §§ 101, 102, 103, and 112, because the claims are directed to abstract ideas or other non-statutory subject matter, because the claims lack novelty, and are taught and suggested by the prior art, because the claims are obvious in view of the prior art, and because the claims suffer from a failure of written description, lack of enablement, and claim indefiniteness.

### **Third Affirmative Defense – Prosecution History Estoppel/Prosecution Disclaimer (All Counts)**

Jawbone's claims are barred, in whole or in part, by the doctrines of prosecution history estoppel and/or prosecution disclaimer.

### **Fourth Affirmative Defense – Waiver and Estoppel (All Counts)**

Jawbone's claims are barred, in whole or in part, by the doctrines of waiver and estoppel.

### **Fifth Affirmative Defense – Laches (All Counts)**

The relief sought by Jawbone is barred, in whole or in part, by the equitable doctrine of laches.

### **Sixth Affirmative Defense – Inequitable Conduct/Fraud on the Patent Office**

Jawbone's claims are barred, in whole or in part, due to inequitable and/or fraudulent conduct on the United States Patent & Trademark Office (USPTO).

### **Seventh Affirmative Defense – Substantial Non-Infringing Uses (All Counts)**

Any and all products or actions accused of infringement by Jawbone have substantial uses that do not infringe and do not induce or contribute to the alleged infringement of the claims of the Patents-in-Suit.

### **Eight Affirmative Defense – Limitation on Patent Damages (All Counts)**

Jawbone's claim for damages, if any, against Google for alleged infringement of the Patents-in-Suit are limited by 35 U.S.C. §§ 286, 287 and/or 288, and by the territorial limits of the United States patent laws.

**Ninth Affirmative Defense – Equitable Relief Unavailable (All Counts)**

Jawbone is barred from obtaining any equitable relief from Google because any alleged injury to Jawbone is neither immediate or irreparable, Jawbone has an adequate remedy at law, and granting equitable relief would not be in the public interest.

**Tenth Affirmative Defense – Damages Speculative, Uncertain, and Contingent (All Counts)**

Jawbone's alleged damages are speculative, uncertain and/or contingent, have not accrued, and are not recoverable.

**Eleventh Affirmative Defense – No Injury (All Counts)**

Jawbone's claims are barred, in whole or in part, because Jawbone has not suffered any injury in fact from the conduct alleged in the Complaint.

**Twelfth Affirmative Defense – No Causation (All Counts)**

Google's conduct was and is neither the cause in fact nor the proximate cause of any injury, loss, or damage alleged by Jawbone.

**Thirteenth Affirmative Defense - 28 U.S.C. § 1498 (All Counts)**

To the extent Jawbone's allegations of infringement include any method, system, apparatus and/or product used by or manufactured by or for the United States, Jawbone's claim for damages for alleged infringement is limited and/or barred by 28 U.S.C. § 1498.

**EXCEPTIONAL CASE**

On information and belief, this is an exceptional case entitling Google to an award of its attorneys' fees in connection with defending this action pursuant to 35 U.S.C. § 285, as a result

of, *inter alia*, Jawbone’s assertion of the Patents-in-Suit against Google with the knowledge that Google does not infringe any valid or enforceable claim of the Patents-in-Suit and/or that the Patents-in-Suit are invalid and/or unenforceable.

### **GOOGLE’S PRAYER FOR RELIEF**

WHEREFORE, Google respectfully requests the Court to enter judgment in its favor and against Jawbone as follows:

- a. For a judgment dismissing Jawbone’s Complaint against Google with prejudice;  
and
- b. For a judgment that the Patents-in-Suit, and every asserted claim thereof, are not infringed, and are invalid and unenforceable;
- c. For an order that Google is the “prevailing party” with respect to Jawbone’s patent claims and that this case is “exceptional” within the meaning of 35 U.S.C. § 285, and for an award granting Google its reasonable attorneys’ fees and costs, as permitted by law or equity;
- d. A judgment limiting or barring Plaintiff’s ability to enforce the Patents-in-Suit in equity;
- e. Such further relief as this Court may deem just and proper.

### **GOOGLE’S JURY DEMAND**

Google hereby demands a jury trial for all issues so triable.

Respectfully submitted,

KEKER, VAN NEST & PETERS LLP

Dated:

By: */s/ David S. Silbert with permission,  
by Michael E. Jones*

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